

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTWAN WILLIAMS BACON,

Plaintiff,

Case:2:21-cv-10350

Judge: Murphy, Stephen J.

MJ: Whalen, R. Steven

Filed: 01-28-2021

CMP BACON V. MIDWESTERN PET FOOD INC. ET AL (DA)

-v-

MIDWESTERN PET FOOD INC.,
DOWAGIAC TRACTOR SUPPLY Co.,
In their individual and
official capacity,

Defendant(s).

JURY TRIAL DEMANDED
IMMEDIATE RELIEF SOUGHT

CIVIL RIGHTS COMPLAINT
JURY TRIAL DEMANDED

PRELIMINARY STATEMENT:

This is a Civil Rights Action filed by Plaintiff, Antwan Bacon who is a resident of the state of Michigan, for Damages and Injunctive Relief under 42 U.S.C. § 1983, alleging animal cruelty and death by poisoning with Aflatoxin of three (3) family pets (dogs), in violation of the Fourteenth Amendment of the United States Constitution.

JURISDICTION AND VENUE:

1. This Honorable Court has jurisdiction over Plaintiff's claims of violation of Federal Constitution Rights under 28 U.S.C. § 1331 and § 1343(a)(3)

PARTIES:

2. The Plaintiff, Antwan Bacon, was residing at 530 South Front St., in Dowagiac, MI 49047, during the events described in this complaint.

3. Defendant, Midwestern Pet Food Inc., was responsible for the poisonings and death of King, Princess, and puppy Eli, the family pets (3 dog's), at the times relevant to this complaint. Defendant's only known address by Plaintiff is: 9634 Hedden Rd., Evansville, IN 47725.

4. Dowagiac Tractor Supply Co., was responsible for the poisonings and death of King, Princess, and puppy Eli, the family pets (3 dog's), at the times relevant to this complaint. Defendant's only known address by Plaintiff is: 56418 Pokagon St., Dowagiac, MI 49047.

5. Defendant(s) are sued in their official and individual capacity.

6. All defendants have acted, and continued to act, under the color of state law at all times relevant to this complaint.

FACTS:

7. On October 14, 2020, between the hours of 6:00am and 6:30am Mr. Bacon was awoken by sounds of high pitch dog whining where I then put my shoes on and proceeded down stairs to see what the noise and problem was concerning the family pets.

8. The families seven month old puppy Eli was laying on his side in the middle of the kitchen floor unresponsive while Princess our female family pet dog was whining over him.

9. So I checked to see if the puppy Eli was still alive, he was diseased.

10. At this time, my fiancée Abigail came down stairs and said whats wrong and then she put her hand over her mouth and said is the kids puppy dead.

11. I said yes.

12. She said we have to hurry up and do something quickly before the kids wake up and see this, it will destroy them, we just bought Eli for them.

13. I said your right, and grabbed a towel out of the laundry basket covered him up and told my fiancée to watch him so I could go get dressed and go out side and dig a grave for Eli.

14. I was unaware at the time of the cause of death nor did it cross my mind that it was the very SportMix Premium Energy Plus dog food that I had been purchasing every week 2 bag's at a time for \$29.00, plus taxes sense the first of Oct. 2020, (see.ex.1.att.), from the Tractor Supply Co. store in Dowagiac, Michigan. (See.Ex.2.att.).

15. Now after returning back up stairs attempting to be quite and rushing at the same time to get dressed and brush my teeth in the bathroom while all 5 of our children don't wake up and go down stairs without my knowledge, until I heard them all start crying and my fiancée trying to get the kids to put there puppy down and stop hugging and kissing Eli.

16. So I rushed back down stairs and grabbed Eli and raped him back up inside of the towel and put my coat on and went out the back door of the house with the kids in tow as they are yelling for me to take him to the doctor so he could fix there puppy.

17. While the children, my fiancée, and now me to are crying at the door of the house, I'm trying to explain to all 5 of my kids that that because of the covid-19 pandemic that we can not afford to take Eli to the veterinarian where daddy could barely afford to buy dog food and that its to late because Eli is gone to doggy heaven.

18. So as we attempted to corral the kids to keep them from following me outside with there puppy with no shoes or socks on in the dead of winter, I closed the door and locked the security gate and started digging a grave for Eli.

19. After finishing around about 7:30am to 8:00am I went back inside of the resident to check on my family and the conditions of the other two dogs King and Princess.

20. After a few days passed I began to notice that King and Princess was not acting normally, (speeding through the house and jumping up on the furniture and chasing the kids around the house), I did not think anything of it, they could just be tired.

21. So on Nov 20, 2020, between 6:00am and 6:30am I came down stairs to get a drink of water.

22. When I reached the bottom of the stairs there was multiple puddles of vomit that I stepped in and multiple polls of dog feces spread all over the kitchen and living room floors, that I spent the remainder of the morning cleaning up.

23. I then examined both of the family pets and noticed that there eye's where completely yellow, they both where refusing to eat and King and Princess are 100% sluggish, so I pick them up and took them outside with the kids to try and get them to play, where after a half hour and eating some grass they started to come around.

24. So I continued to feed both pets with the SportMix Premium Energy Plus unknowing that it was the very thing that's killing our family pets.

25. Where on January 7, 2021, at 3:06pm I took a trip to the local Tractor Supply store like I do every week to purchase some SportMix Premium Energy Plus 44 lbs., (2 bags), when I was approached by the store manager, who informed me that there had been a recall on that brand of dog food, and that I should not buy any more of it until I check with the Midwestern Pet Food company before I start again. (The SportMix Premium Energy Plus dog food was still on the store shelves).

26. The store manager gave me the number to there corporate office, as I was standing in the middle of the store thinking back and contemplating if the dog food that I been buying all this time was the source of all my family pets problems, not fully sure I still bought one bag of SportMix dog food for \$29.00, plus tax. (See.Ex.2.att.).

27. I went straight home and told my fiancée about what I had just found out from the store manager concerning the dog food we been buying for months might be hurting King and Princess.

28. As she stood there in shock, I go on the inter net and looked up the corporate office number for Tractor Supply Co. and called them immediately and asked them about the FDA recall on the SportMix Premium Energy Plus dog food that was being sold at there Dowagiac store. (See.Ex.3.att.).

29. The man on the phone informed me that yes there had been a recall on that brand of dog food by the Food And Drug Administration and that they are in the process of removing it from the store shelves.

30. The man on the phone asked me how long had I been purchasing that brand of dog food, I told him sense October 1, of 2020, he then asked me was I having problems with my family pets, I said yes, one death and two very sick right now, he then informed me that he would be contacting the manufacturing company and notifying them of my current condition of my pets, and he would be sending me a \$150.00 gift card to cover my expenses until the main Midwestern Pet Food Inc. office gets in touch with me.

31. While I was still on the phone with the Tractor Supply corporate office he took my phone number and said he would pass it on, and that he was sending me that gift card by e-mail right now, which I received a few minutes later on my phone, I then thanked him and we ended the call.

32. Within the hour I received a phone call from a representative from the Midwestern Pet Food Inc., Co., who asked me to fill-out a online form outlining everything that had happened to my pets and had I taken them to a vet, I explained that I was financially incapable of taking any of them to the vet, and that one of our family pets name Eli was already dead that cost this family a substantial amount of money. (See .Ex.5.att.).

33. The representative told me to finish filling out the online form and that they would be reaching out to contact me real soon, (that days date was January 7, 2021, and time was between 4:30pm and 5:00pm).

34. I said to the representative that our family pets are on the verge of dying right now, and is there some thing that they could do this very moment, so I could get them the help they need immediately.

35. he said that there was nothing that could be done, and that they would be contacting me soon. The phone call was terminated.

36. I have not heard anything from Midwestern Pet Food Inc., or Tractor Supplies Corporate offices as of today's date as me and my family sits around and watch our precious dogs that we've had for more three years slowly die right in front of our eye's. (See.Ex.4.att.).

37. On 1/16/2021, Dr. Stan from Midwestern Pet Foods Inc. called the house at 12:00noon, and asked me to fill-out a online form that has the same questions in it that I filled out on 1/7/2021, for the Midwestern Pet Food representative.

38. The representative said yes I know, but I need you to do it again.

39. So I did, and I asked for some assistance for my families last to pets, he stated that the company would be in contact with me soon and the phone call ended there after.

CLAIMS OF RELIEF

40. (Paragraphs 1 through 41) and all exhibits pertaining thereto are incorporated herein.

41. That as a result of the actions of defendants, all while acting under the color of state law intentionally inflicted cruel and unusual punishment and death of the Plaintiffs' family pets with a dangerously toxic poison called Aflatoxin through a dog food called SportMix who's owner is a citizen of the United States, who's pets have the rights to be free from any form of animal cruelty or inhuman treatment, in contravention of the Fourteenth Amendment of the U.S. Constitution 42 USC § 1983. The Plaintiff and his family pets have suffered and will continue to suffer from physical and mental pain, mental anguish, emotional distress and death due to the nefarious actions of the defendant(s), where they have refused to except responsibility for there unscrupulous behavior by using Asperillus flavus at high levels that has killed and sickened hundreds of dogs and cats for which the defendant(s) have not taken the initiative to curve or hamper its products immanent threat of immediate danger with help of financial assistance for veterinarian medical treatment to stop the poisoning of pet owners love ones.

RELIEF REQUESTED

Wherefore, the Plaintiff respectfully request that this Court grant the following relief:

A. Issue a declaratory judgment that:

1. The actions of Defendant(s); Midwestern Pet Food Inc., and Dowagiac Tractor Supply Co., violated the Plaintiff's and his family pets rights to be free from cruel and unusual punishment, animal cruelty, and death under the Fourteenth Amendment of the United States Constitution.

B. Issue an injunction ordering the Defendant(s) to:

1. That All manufacturing compainies owned by Midwestern Pet Foods Inc ., to be closed until a full inspection of each facility is conducted by an independent agency and it is determined that there are no poisonous toxins are found in any of there plaints world wide.

2. And to remove all SportMix Premium Energy Plus Pet Foods from all distributors shelves until completion of that initial inspection by that outside agency final review.

3. And cover all medical expenditures at the Defendant(s) expense for each pet affected by the toxin Aflatoxin that was found in the Defendant's pet food products.

C. Award compensatory damages in the following amounts:


1. \$50,000.00, jointly and severally against defendant(s) Midwestern Pet Food Inc., and Tractor Supply Co., for their violations of the Plaintiff's and their family pets Fourteenth Amendment rights, resulting in physical and mental anguish, including death.

D. Award punitive damages in the following amount so as to stem the future tide of intentional irreparable injuries.

E. To grant any other such relief as this Court deems just and proper, limited to, but including, attorney cost and fees and all medical bills the Plaintiff may or will incur because of this incident.

Dated: 1/28/21

Respectfully submitted,


Mr. Antwan W. Bacon
Plaintiff In Pro Se
530 South Front St.
Dowagiac, MI 49047

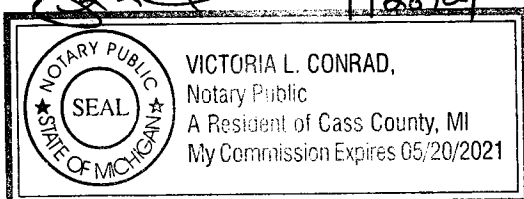
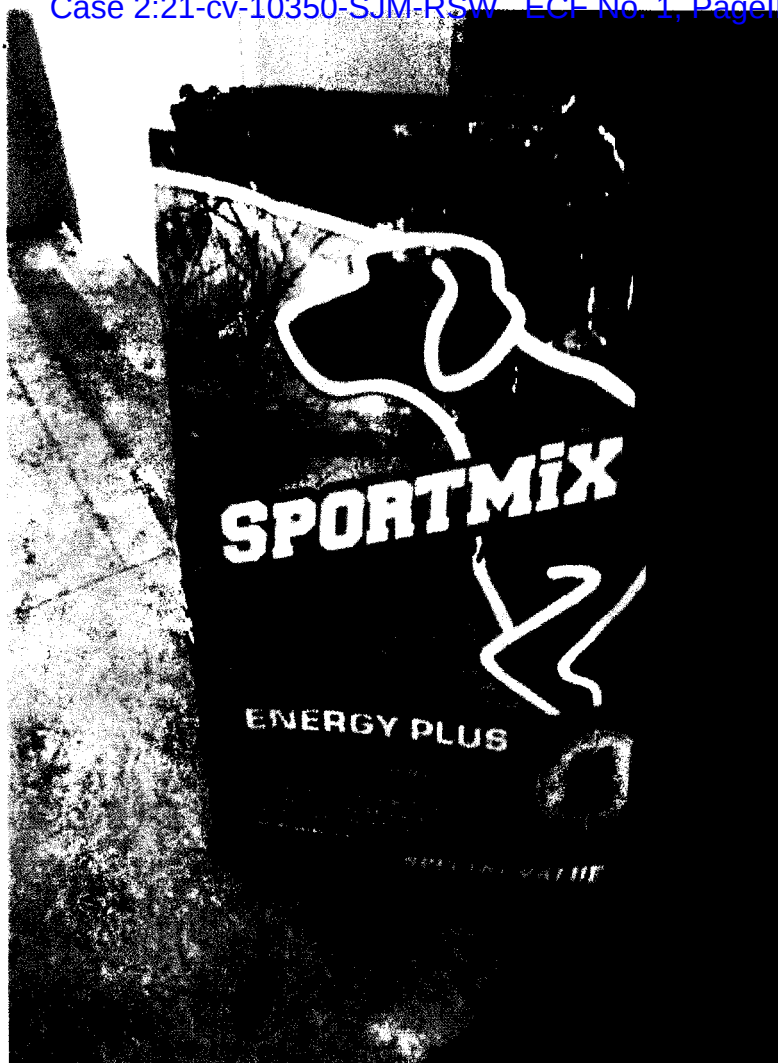


EXHIBIT 1



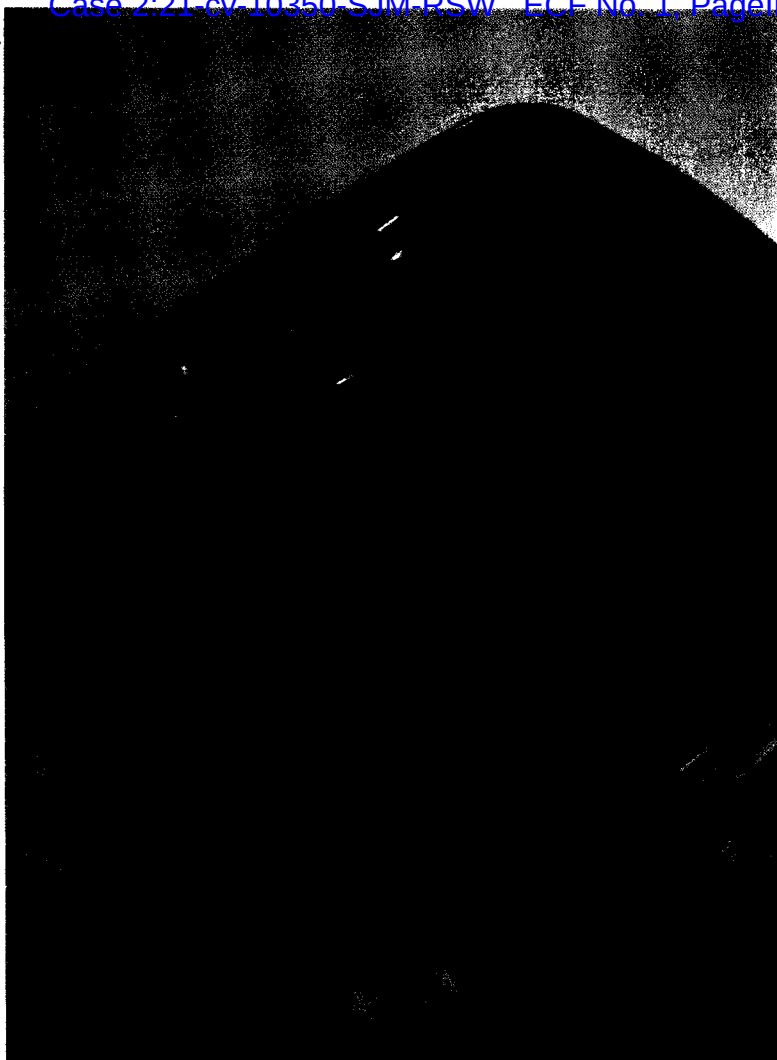


EXHIBIT 2

Ticket: 0000
 Date: 1/7/21 Time: 3:06 PM
 Store: 2226 Register: 1
 Cashier: Kiel
 Loyalty #: 770122260001277

Item	Qty	Price	Amount
SPMX 4015 EN FLYER 2460175	1	24.99	24.99
GATORADE SLEEN GLACIER FREEZE 200Z 1514740	1	1.89	1.89
GATORADE FRUIT PUNCH 200Z 1614738	1	1.89	1.89

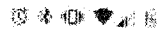
Subtotal 28.77
 Tax 1.50
 Total 30.27

Debit Card - SALE 30.27
 *****9343 - Pinpad Swiped
 Authorization #:
 Bank Reference #: 61106021304
 Terminal ID 001792226000100
 CVM: PIN Verified

Cash 0.00

EXHIBIT 3

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product list may continue to expand.

The list of recalled dry pet food products announced by Midwestern Pet Food, Inc. on December 30, 2020 is:

- Sportmix Energy Plus, 50 lb. bag
 - Exp 03/02/22/05/L2
 - Exp 03/02/22/05/L3
 - Exp 03/03/22/05/L2
- Sportmix Energy Plus, 44 lb. bag
 - Exp 03/02/22/05/L3
- Sportmix Premium High Energy, 50 lb. bag
 - Exp 03/03/22/05/L3
- Sportmix Premium High Energy, 44 lb. bag
 - Exp 03/03/22/05/L3
- Sportmix Original Cat, 31 lb. bag
 - Exp 03/03/22/05/L3
- Sportmix Original Cat, 15 lb. bag
 - Exp 03/03/22/05/L2
 - Exp 03/03/22/05/L3



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What is the Problem?

On December 30, 2020, Midwestern Pet Food, Inc. announced a recall of certain lots of Sportmix pet food products after FDA was alerted about reports of at least 28 dogs that have died and eight that have fallen ill after consuming the recalled Sportmix pet food. Multiple product samples were tested by the Missouri Department of Agriculture and found to contain very high levels of aflatoxin. Aflatoxin is a toxin produced by the mold *Aspergillus flavus* and at high levels it can cause illness and death in pets. The toxin can be present even if there is no visible mold.

FDA is issuing this advisory to notify the public about the potentially fatal levels of aflatoxin in pet food products that may still be on store shelves, online, or in pet owners' homes.

FDA is conducting follow-up activity at the manufacturing facility.


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This is a developing situation and the FDA will update this page with additional information as it becomes available.

What are the Symptoms of Aflatoxin Poisoning in Pets?

Pets are highly susceptible to aflatoxin poisoning because, unlike people, who eat a varied diet, pets generally eat the same food continuously over extended periods of time. If a pet's food contains aflatoxin, the toxin could accumulate in the pet's system as they continue to eat the same food.

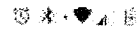
Pets with aflatoxin poisoning may experience symptoms such as sluggishness, loss of appetite, vomiting, jaundice (yellowish tint to the eyes, gums or skin due to liver damage), and/or diarrhea. In some cases, this toxicity can cause long-term liver issues and/or death. Some pets suffer liver damage without showing



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appetite, vomiting, jaundice (yellowish tint to the eyes or gums due to liver damage), and/or diarrhea. In severe cases, this toxicity can be fatal. In some cases, pets may suffer liver damage but not show any symptoms.

- Pet owners should stop feeding their pets the recalled products listed below and consult their veterinarian, especially if the pet is showing signs of illness. The pet owner should remove the food and make sure no other animals have access to the recalled product.
- FDA is asking veterinarians who suspect aflatoxin poisoning in their patients to report the cases through the Safety Reporting Portal or by calling their local FDA Consumer Complaint Coordinators. Pet owners can also report suspected cases to FDA.

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EXHIBIT 4



EXHIBIT 5



EXHIBIT 5

June 4th

Dollars

Balance Due	0	\$ 4
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for puppy

MR. ANTHAN WILLIAMS BACON
530 SOUTH FRONT ST.
DOWAGIAC, MI 49047

CERTIFIED MAIL



3640 0001 3953 9651



U.S. POSTAGE PAID
DOWAGIAC, MI
JAN 18, 21
\$6.80
R2325K13870-9

1/28/21

192-252-129

U.S. MAIL

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THEODORE LEVIN UNITED STATES COURTHOUSE
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